

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCALIBUR CHARTER SCHOOL, INC.

and

Case 28-CA-023039

NATHANIEL WICKE

ORDER REMANDING

On March 29, 2018, the National Labor Relations Board issued a decision in this proceeding in which it resolved multiple complaint allegations and severed for further consideration allegations that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining various work rules. 366 NLRB No. 49.¹ On October 15, 2018, the Board issued a Notice to Show Cause why the severed allegations should not be remanded for further consideration under *The Boeing Co.*, 365 NLRB No. 154 (2017). The General Counsel filed a response supporting remand, and the Respondent filed a response opposing remand.

Having duly considered the matter, including the arguments raised by the Respondent, we find that it would effectuate the purpose of the Act to remand this proceeding for further consideration in light of *Boeing*.²

¹ On May 9, 2018, the Board issued an erratum to correct inadvertent mistakes in its original decision.

² The Respondent contends, among other things, that the Board cannot remand the severed allegations because the Board lost jurisdiction over them when the Respondent petitioned the Court of Appeals for the Ninth Circuit to review the Board's March 2018 decision and the Board thereafter cross-applied for enforcement of that decision. The Respondent is mistaken. First, Sec. 10(d) of the Act provides that the Board can modify or set aside any "finding or order" it has made or issued in a case until the underlying administrative record is filed in court. Here, the Board has not made any finding or issued any order as to the severed work-rule allegations, so Sec. 10(d) is not triggered. Second, although Sec. 10(e) of the Act provides that the jurisdiction of the court of appeals becomes "exclusive" upon the filing of the administrative record, the

IT IS THEREFORE ORDERED that, because Judge Joel P. Biblowitz has retired, this proceeding is remanded to Chief Administrative Law Judge Robert A. Giannasi to designate another administrative law judge in accordance with Section 102.36 of the Board's Rules and Regulations.

IT IS FURTHER ORDERED that the administrative law judge designated shall reopen the record, if necessary, and prepare a supplemental decision addressing the complaint allegations affected by *Boeing* and setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C., December 19, 2018.

By direction of the Board:

/s/ Roxanne L. Rothschild

Acting Executive Secretary

court's jurisdiction is only exclusive as to the non-severed matters that are encompassed within the Board's final order. It does not extend to the severed matters that the Board expressly did not reach in its order. See, e.g., *Stephens Media, LLC v. NLRB*, 677 F.3d 1241, 1249-1250 (D.C. Cir. 2012) (holding that the presence of a severed issue does not undermine the finality of the order or impede the court's review of unrelated matters addressed in the order; nor does the court's review impede continued consideration of a severed issue by the Board).